



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing convened by teleconference on December 5, 2022, to deal with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and recovery of the cost of the filing fee.

The tenant, the landlord, and the landlord's witnesses, (NK and CK) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 52 minutes, at which time the hearing was adjourned due to the length of time as the hearing was scheduled for 1 hour. An Interim Decision was issued on December 7, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the tenant, the tenant's witness, and the landlord attended.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act and recovery of the cost of the filing fee?

Background and Evidence

The tenant submitted that the tenancy started on April 1, 2020 and ended on May 18, 2021, when they vacated the rental unit. The monthly rent at the end of the tenancy was \$900. Filed in evidence was the written tenancy agreement.

The tenant's monetary claim is \$10,800, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at \$900 per month.

The tenant wrote in their application the following:

\$100 for dispute charge. \$10,800 = One year's rent as compensation for not acting in good faith regarding my eviction and for not moving in within a reasonable amount of time.

[Reproduced as written]

The Notice received from the landlord was dated April 5, 2021, listing an effective move-out date of June 30, 2021. Filed in evidence was the 2 Month Notice.

The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse.

In response to the tenant's claim, the landlord proceeded first in the hearing.

The landlord stated that they began occupying the rental unit in June when they began staying in the condo. This occurred while renovations were ongoing and because of this, no furniture was moved into the unit. By August, the renovations were completed.

The landlord said that the rental unit did not need renovations, but they took advantage of the opportunity to learn about renovations from someone experienced in renovations. The renovations took longer than expected due to supply chain issues.

The landlord provide a written submission, reproduced in relevant part as follows:

NK and I became friends and, subsequently, started dating. Over the next few months I learned that NK had renovation and construction experience and that her father is a licensed builder. NK offered their help if I wished to renovate my unit before living in it. I appreciated the offer and felt it was a good opportunity to not only update my unit and replace items such as the toilet but also to gain some valuable experience. One of the reasons I did not contemplate a renovation until after I delivered to (tenant) the notice to vacate is that I did not have the skills to perform a renovation. I did not have any construction or renovation experience and I did not even own any tools. However, as a result of NK and CK's generous offer to help me renovate I then had reason to purchase a variety of tools and an opportunity to gain valuable hands-on experience.

...

*Not only did I intend to occupy the unit when I delivered to (tenant) the notice to vacate I did occupy the unit at the conclusion of the renovation. The renovation took longer than I anticipated due to delays in the delivery of construction materials I purchased from Home Hardware and Home Depot as well as the furniture I ordered from Home Goods and the Brick. Every supplier I dealt with cited supply chain issues related to Covid-19 as the cause of the delays. It was simply not possible to complete the renovation sooner as a result of those delays. Eventually I was able to complete the renovation and furnish the unit. I subsequently moved in and occupied the unit during the months of September, October and November. I did not sleep in the unit every night because I sometimes stayed with my girlfriend, NK, at her place in ***, and on other occasions I stayed with my parents after dinners at their homes.*

...

After living in the unit over the Autumn months I was eager to find alternative accommodation and after discussions with NK we agreed that I would move in with her rather than back in with my parents. Conveniently and coincidentally, NK was asked by one of her tenants if she had an available unit for rent for a family

*friend of hers who was moving to the area from ***. NK asked me if I would rent my unit to this young man and I agreed.*

...

In sum, I intended to occupy my unit when I delivered to (tenant) the notice to vacate, I did my level best to occupy the unit within a reasonable amount of time given the constraints I faced sourcing materials and furniture for my renovation, I subsequently occupied the unit and then my circumstances changed and I chose to leave the unit. I should not be punished for having adapted to changing life circumstances...

[Reproduced as written except for redacting personal information to protect privacy]

In addition to their testimony, NK provided a written statement, reproduced in relevant part as follows:

From May - October 2021, I helped [] with various aspect of his renovation project. His unit was never in such a state that he could not live in it and he did in fact live in it throughout the renovation. I was witness to this.

The allegations that [] renovated his unit solely to evict his tenant and then re-rent the unit at a higher price are completely false. In December 2021, as our relationship progressed, we decided as a couple that he would move in with me at my home in []. I would be willing to attest to all of these facts under oath.

[Reproduced as written except for anonymizing personal information to protect privacy]

Tenant's response –

The tenant said that they were evicted so the landlord could renovate the rental unit, not for the reason stated on the 2 Month Notice. The tenant submitted that they could hear that a lot of renovations were ongoing, and the landlord talked about the renovations themselves. In early December, 2021, they saw someone else move into the rental unit.

The tenant provide a written submission, reproduced in relevant part as follows:

Once I moved out of Unit [] on May 18th, 2021, he began his extensive renovations with the help of []. They started tearing out the kitchen the week I moved out and I saw both of them taking out the old kitchen cupboards. The unit was in livable condition before his renovations⁴ but slightly outdated. It is evident he did not reside in the unit for the required six months and did not act in good faith regarding my eviction notice. His main intention was to update the unit. So much so, he was posting the progress of his Renos on Instagram regularly and the images are still up on his profile to date.

He was often seen on the premises by multiple residents during the day while he was doing some kind of alteration or project to the condo. This behaviour went on from approximately May to November 2021. It seemed as though [] kept up with appearances as if he was residing in the unit and building. He claimed he was planning to move in around June. This move never happened and the Renos continued. The unit was often left empty during most evenings. I even observed [] driving up to the building in his pyjamas and taking out the garbage in our communal dumpster.⁵ This happened sometime in the summer.

However, on December 4th, 2021, a younger male began moving into the unit. I saw a U-Haul truck parked outside and items being carried up to Unit []. He still resides there to date.

[Reproduced as written except for anonymizing personal information to protect privacy]

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

While I have reviewed the evidence submitted prior to the hearing and the oral evidence from the hearing, I refer to only the relevant evidence regarding the facts and issues in determining this Decision.

While both parties argued whether the landlord acted in good faith, good faith is required of a landlord when they issue the tenant a 2 Month Notice to end the tenancy. The good faith consideration is not a component of a monetary claim for compensation under the Act, as will be more fully set out.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

In the case before me, the undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, listing an effective date of June 30, 2021. In this case, the Notice listed that the rental unit will be occupied by the landlord or the landlord's spouse.

Section 51(2) of the Act provides that if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or **if the rental unit is not used for that stated purpose for at least 6 months' duration**, beginning within a reasonable period after the **effective date of the notice**, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

The landlord's own evidence confirms that they did not use the rental unit for the stated purpose for 6 months after the effective date of June 30, 2021. In this case, the full 6 months would end on December 31, 2021.

The landlord said they re-rented the rental unit on December 5, 2021 and therefore, they did not occupy the rental unit for 6 months.

I find the landlord must pay the tenant the amount of \$10,800, the equivalent of 12 times the monthly rent at the end of the tenancy of \$900.

Section 51(3) of the Act authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find the landlord did not explain why they chose to re-rent the rental unit short of the 6 months and did not claim that extenuating circumstances prevented them from waiting until after December 2021.

For the above reasons, I therefore find the landlord submitted insufficient evidence of extenuating circumstances as contemplated by the Act and Tenancy Policy Guideline.

For the above reasons, I find the tenant is entitled to monetary compensation equivalent to 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice for 6 months.

As a result, I grant the tenant a monetary award of **\$10,800**, which is the equivalent of the monthly rent of \$900 for 12 months.

I find merit with the tenant's application and award them recovery of their filing fee of **\$100**, pursuant to section 72(1) of the Act.

I grant the tenant a monetary order (Order) of **\$10,900**.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is informed that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenant's application for monetary compensation is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 09, 2023

Residential Tenancy Branch